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COMMISSIONERS
BOB STUMP - Chairman
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OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: JUNE 26, 2013
DOCKET NO.: T-03699A-12-0097

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

ACCESS ONE, INC.
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 5, 2013

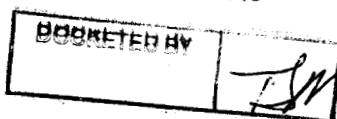
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 17, 2013 AND JULY 18, 2013

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

JUN 26 2013



Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 ACCESS ONE, INC. FOR APPROVAL OF A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE RESOLD AND
12 FACILITIES-BASED LOCAL EXCHANGE
13 TELECOMMUNICATIONS SERVICES

DOCKET NO. T-03699A-12-0097

DECISION NO. _____

ORDER

14 Open Meeting
15 July 17 and 18, 2013
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 On March 16, 2012, Access One, Inc. ("Access One" or the "Company") filed with the
19 Arizona Corporation Commission ("Commission") an application for approval of a Certificate of
20 Convenience and Necessity ("CC&N") to provide resold and facilities-based local exchange
21 telecommunication services in the State of Arizona. Access One's application also requests a
22 determination that its proposed services are competitive in Arizona.

23 On June 22, 2012, Access One filed a response to the Commission's Utilities Division
24 ("Staff") First Set of Data Requests.

25 On October 19, 2012, the Company docketed an amended application requesting authority
26 to provide only resold local exchange telecommunication services in Arizona.

27 On November 28, 2012, Staff filed a Staff Report recommending approval of Access One's
28 amended application, subject to certain conditions.

On January 22, 2013, a Procedural Order was issued scheduling a hearing to begin on March
19, 2013, and establishing other procedural deadlines.

On January 29, 2013, a Procedural Order was issued vacating the hearing scheduled in this
matter, stating that because Access One's amended application requested authority to only provide

1 resold local telecommunication services, a hearing is not required and directing Access One to file an
2 Affidavit of Publication by February 18, 2013.

3 On February 19, 2013, Access One docketed an Affidavit of Publication.

4 On April 8, 2013, Access One docketed an additional Affidavit of Publication.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9 1. Access One is a foreign C corporation organized under the laws of Illinois and
10 authorized to transact business in Arizona.¹

11 2. Access One's principal offices are located in Chicago, Illinois.²

12 3. In Decision No. 61922 (August 27, 1999), Access One was authorized to provide
13 resold long distance telecommunication services in Arizona.

14 4. On March 16, 2012, Access One filed an application with the Commission requesting
15 authority for a CC&N to provide resold and facilities-based local exchange telecommunications
16 services in Arizona.

17 5. On October 19, 2012, Access One amended its application requesting authority to
18 provide only resold local exchange telecommunication services in Arizona.³

19 6. Notice of the amended application was given in accordance with the law.

20 7. Staff recommends approval of the Access One's amended application for a CC&N to
21 provide resold local exchange telecommunications services subject to the following conditions:

- 22 a. Access One complies with all Commission Rules, Orders and other
23 requirements relevant to the provision of intrastate telecommunications
24 services;
- 25 b. Access One abides by the quality of service standards that were approved by
the Commission for Qwest in Docket No. T-01051B-93-0183;
- 26 c. Access One be prohibited from barring access to alternative local exchange

27 ¹ Response to Staff's Data Request docketed June 22, 2012.

28 ² Application at Attachment B.

³ Amended Application docketed October 19, 2012.

service providers who wish to serve areas where Access One is the only provider of local exchange service facilities;

- d. Access One be required to notify the Commission immediately upon changes to Access One's name, address or telephone number;
- e. Access One cooperate with Commission investigations including, but not limited to customer complaints;
- f. The rates proposed by this filing are for competitive services. In general, rates for all competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by Access One and believes they are just and reasonable as they are comparable to other competitive local exchange carriers ("CLECs") and other incumbent local exchange carriers ("ILECs") offering service in Arizona and comparable to the rates Access One charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
- g. Access One offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
- h. Access One offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
- i. The Commission authorize Access One to discount its rates and service charges to the marginal cost of providing the services.

8. Staff further recommends that Access One comply with the following items and if Access One fails to do so, that Access One's CC&N be null and void after due process.

- a. Access One shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
- b. Access One shall:
 - (i) Procure either a performance bond or irrevocable sight draft letter of credit ("ISDLC") equal to \$25,000. The minimum performance bond or ISDLC amount of \$25,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from Access One's customers. The performance bond or ISDLC amount should be increased in increments of \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 of the performance bond or ISDLC amount.
 - (ii) Docket proof of the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a Decision in this matter. The

performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

- (iii) Abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF").

Technical Capabilities

9. Access One intends to offer local exchange telecommunication services to business customers in Arizona.⁴ The Company intends to provide its proposed services by reselling the services of XO Communications, an authorized incumbent local exchange carrier in Arizona.⁵

10. Access One is authorized to provide competitive telecommunication services in forty-three states/jurisdictions, including Arizona.⁶ The Company currently provides resold long distance telecommunication services to thirty (30) Arizona business customers.⁷

11. Staff verified in twelve (12) states/jurisdictions that Access One is certified or registered to provide its proposed services.⁸

12. Access One's amended application states that its seven (7) top executives have an average of 22 years' experience in the telecommunications industry.⁹

13. According to the Company, it will provide customer service using an online portal; direct contact with account managers; or by calling a toll free number.¹⁰ The Company states that if customer service issues arise outside of its normal business hours, customers can use the same toll

⁴ Response to Staff's Data Request at PJG 1.8, docketed June 22, 2012.

⁵ Amended Application docketed October 19, 2012.

⁶ Application at Attachment C and *See*, Decision No. 61922 (August 27, 1999).

⁷ Response to Staff's Data Request at PJG 1.9, docketed June 22, 2012.

⁸ Staff Report at 1.

⁹ Response to Staff's Data Request at Exhibit B, docketed June 22, 2012.

¹⁰ Response to Staff's Data Request at PJG 1.5, docketed June 22, 2012.

1 free number to access a 24/7 answering service and calls will be returned to customers within 30
2 minutes.¹¹

3 14. Based on the above factors, Staff believes Access One has the technical capabilities to
4 provide its proposed services in Arizona.

5 **Financial Capability**

6 15. Access One provided audited financial statements for the 12 months ending December
7 31, 2010, listing total assets of \$5,170,353; total equity of negative equity of \$674,095; and a net
8 income of \$515,190.¹² For the 12 months ending December 31, 2011, Access One listed total assets
9 of \$5,153,613; total equity of negative of \$67,605; and a net income \$606,487.¹³

10 16. Access One's amended application states its proposed tariffs will not require deposits
11 or advanced payments from its customers.¹⁴ The Commission's policy is that resellers providing local
12 exchange services should procure a performance bond or ISDLC to protect customers. Under the
13 Commission's policy, Staff recommends that Access One procure a performance bond or ISDLC in
14 the amount of \$25,000.¹⁵

15 **Rates and Charges**

16 17. Access One docketed its proposed business rates and also provided a comparison of its
17 proposed rates and those of other ILECs operating in Arizona.¹⁶

18 18. Staff states that Access One will be a new entrant into the market, face competition
19 from other ILECs, and will not be able to exert any market power in the markets it proposes to
20 serve.¹⁷ Further, Staff states that the competitive process should result in rates that are just and
21 reasonable.

22 19. Access One states that its projected fair value rate base ("FVRB") will be zero for the
23 first twelve months of operation in Arizona.¹⁸ Staff believes Access One's FVRB is too small to be
24

25 ¹¹ Response to Staff's Data Request at PJG 1.5, docketed June 22, 2012.

26 ¹² Application at Attachment D.

27 ¹³ Response to Staff's Data Request at Exhibit C, docketed June 22, 2012.

28 ¹⁴ Amended Application at A-15.

¹⁵ Staff Report at 3.

¹⁶ Response to Staff's Data Request at Exhibit E and F.

¹⁷ Staff Report at 3.

¹⁸ Application at B-4.

1 useful in a fair value analysis, would not be useful in setting rates, and should not be given substantial
 2 weight in this analysis.¹⁹ Staff reviewed the proposed rates submitted by the Company and believes
 3 they are comparable to the rates charged by CLECs and ILECs operating in Arizona.²⁰ Therefore,
 4 Staff states that in general, rates for competitive services are not set according to a rate of return
 5 regulation, but are heavily influenced by the market.²¹ Staff recommends that while it considered the
 6 FVRB information, that it not be given substantial weight in setting rates for Access One.²²

7 **Local Exchange Carrier Specific Issues**

8 20. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Access One will make
 9 number portability available to facilitate the ability of customers to switch between authorized local
 10 carriers within a given wire center without changing their telephone number and without impairment
 11 to quality, functionality, reliability or convenience of use.

12 21. Pursuant to A.A.C. R14-2-1204(A) all telecommunication service providers that
 13 interconnect to the public switched network shall provide funding for the AUSF. Access One shall
 14 make payments to the AUSF described under A.A.C. R14-2-1204(B).

15 22. In Commission Decision No. 59421 (December 20, 1995), the Commission approved
 16 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of
 17 service. In this matter, Staff believes Access One does not have a similar history of service quality
 18 problems, and therefore the penalties in that decision should not apply.

19 23. In the areas where the Company is the only local exchange service provider, Staff
 20 recommends that Access One be prohibited from barring access to alternative local exchange service
 21 providers who wish to serve the area.

22 24. Access One will provide all customers with 911 and E911 service where available, or
 23 will coordinate with ILECs, and emergency service providers to facilitate the service.

24 ...

25 ...

26

27 ¹⁹ Staff Report at 4.

²⁰ Staff Report at 4.

²¹ Staff Report at 4.

28 ²² Staff Report at 4.

25. Pursuant to prior Commission Decisions, Access One may offer customer local area signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or unblock each individual call at no additional cost.

26. Access One must offer Last Call Return service, which will not allow the return of calls to the telephone numbers that have the privacy indicator activated.

Complaint Information

27. Access One has neither had an application for service denied nor revoked in any state and no formal complaints, civil, or criminal proceedings filed against it.

28. The Commission's Consumer Services Section shows that there have been zero complaints, inquiries, or opinions filed against Access One through August 16, 2012.

29. The Commission's Corporations Division indicates Access One is in good standing.

30. Staff states that a search of the Federal Communications Commission's website confirmed that no complaints had been filed against Access One.

31. Access One's application states that none of its officers, directors, or partners have been involved in any civil or criminal investigations, or any formal, or informal complaints. Access One also states that none of its officers, directors, or partners has been convicted of any criminal acts in the past ten years.

Competitive Analysis

32. Access One is requesting that its proposed telecommunication services in Arizona be classified as competitive.

33. Staff believes that Access One's proposed services should be classified as competitive because the Company will have to compete with other CLECs and ILECs to gain customers; there are alternative providers to Access One's proposed services; and that Access One has no ability to adversely affect the local exchange service market as several ILECs provide the same services.²³

34. Given the above factors, Staff concludes that Access One's proposed services should be classified as competitive in Arizona.²⁴

²³ Staff Report at 7.

²⁴ Staff Report at 7.

1 **Resolution**

2 35. Access One's top executives possess an average of 22 years' experience in the
3 telecommunication industry; Access One is authorized to provide its proposed services in 43
4 states/jurisdictions; Staff believes that Access One's proposed tariffs will result in just and
5 reasonable rates and that Access One proposed services are competitive in Arizona. We find that
6 Access One has the technical capabilities to provide its proposed services in Arizona; that Access
7 One will be operating in a competitive environment; that Access One's proposed tariffs will result in
8 just and reasonable rates; and that granting Access One authority to provide its proposed services is
9 in the public interest.

10 36. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

11 **CONCLUSIONS OF LAW**

12 1. Access One is a public service corporation within the meaning of Article XV of the
13 Arizona Constitution, A.R.S. §§ 40-281 and 40-282.

14 2. The Commission has jurisdiction over Access One and the subject matter of the
15 application.

16 3. Notice of the application was given in accordance with the law.

17 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
18 CC&N to provide competitive telecommunication services.

19 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
20 Statutes, it is in the public interest for Access One to provide the resold local telecommunications
21 services as set forth in the amended application.

22 6. Access One is a fit and proper entity to receive a CC&N authorizing it to provide resold
23 local exchange telecommunications services in Arizona, subject to Staff's recommendations as set
24 forth herein.

25 7. Access One's fair value rate base is not useful in determining just and reasonable rates
26 for the competitive services it proposes to provide to Arizona customers.

27 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it
28 is just and reasonable and in the public interest for Access One to establish rates and charges that are

not less than Access One's total service long-run incremental costs of providing the competitive services approved herein.

9. Pursuant to A.R.S. § 40-282, the application in this matter may be approved without a hearing.

10. Staff's recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Access One, Inc. for a Certificate of Convenience and Necessity to provide resold local exchange telecommunication services in Arizona, is hereby approved, subject to Staff's recommendations as more fully described in Findings of Fact Nos. 7 and 8.

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1 IT IS FURTHER ORDERED that if Access One, Inc. fails to comply with the Staff
2 recommendations described in Findings Fact No. 8, the Certificate of Convenience and Necessity
3 granted herein shall be considered null and void after due process.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER _____

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

11 IN WITNESS WHEREOF, I, JODI JERICH, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____ 2013.

16 _____
17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____
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27
28

1 SERVICE LIST FOR: ACCESS ONE, INC.

2 DOCKET NO.: T-03699A-12-0097

3 Patrick D. Crocker
4 CROCKER & CROCKER
5 107 West Michigan Avenue, 4th Floor
6 Kalamazoo, MI 49007
7 Regulatory Consultants to Applicant

8 Janice Alward, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, AZ 85007

13 Steven M. Olea, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007
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20
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22
23
24
25
26
27
28